

SEP 13 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

SHELBY SIMPSON,

Plaintiff - Appellant,

v.

CLARE SOLIS; et al.,

Defendants - Appellees.

No. 05-16935

D.C. No. CV-03-05029-AWI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted September 11, 2006**

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

California state prisoner Shelby Simpson appeals pro se from the district court's summary judgment in favor of prison officials in his 42 U.S.C. § 1983 action alleging that prison medical staff acted with deliberate indifference in

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

failing to treat his ankle after surgery, thereby causing infection, and that Nurse Edmond ordered Correctional Officer Rodriguez to take Simpson's medically necessary crutches away, causing further injury and pain. We dismiss for lack of jurisdiction.

Neither the magistrate judge's report nor the district court's order adopting the report in full disposes of Simpson's claim that Edmond acted with deliberate indifference by ordering Rodriguez to take away his crutches despite awareness that Simpson had medical authorization for the crutches. Edmond's participation is mentioned only with respect to the granting of qualified immunity to Rodriguez. Because this claim remains before the district court, the summary judgment order is not a "final decision" under 28 U.S.C. § 1291. *See Chacon v. Babcock*, 640 F.2d 221, 222 (9th Cir. 1981).

DISMISSED.